**UNITED STATES BANKRUPTCY COURT**
**EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

| | | |
|---|---|---|
| In Re: | ) | Case No. 17-40328-705 |
| | ) | |
| SHEPPARD, MICHAEL T., | ) | Chapter 7 |
| | ) | |
| Debtor, | ) | |
| | ) | |
| UNITED STATES TRUSTEE, | ) | Hon. Charles E. Rendlen, III |
| | ) | U.S. Bankruptcy Judge |
| Movant, | ) | |
| | ) | Courtroom 7 South |
| v. | ) | |
| | ) | |
| SHEPPARD, MICHAEL T., | ) | Hearing Date: April 12, 2017 |
| | ) | Hearing Time: 9:30 a.m. |
| Respondent. | ) | |

**UNITED STATES TRUTEE'S MOTION TO DISMISS CASE**
**PURSUANT TO 11 U.S.C. § 707(A)**

Comes now Daniel J. Casamatta, the Acting United States Trustee for Region 13 (the "UST"), by and through the undersigned Trial Attorney, Leonora Long, and respectfully moves the Court to enter an order dismissing this case pursuant to 11 U.S.C. § 707(a). In support of this motion, the UST respectfully states as follows:

**I. Background and Jurisdiction.**

1. This Court has jurisdiction of this matter under 28 U.S.C §§ 1134(a) and (b), 28 U.S.C. §§ 157(a) and (b)(1), and 28 U.S.C. § 151. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (B). This motion is filed pursuant to 11 U.S.C. §§ 707(a).

2. Michael T. Sheppard (the "Debtor") filed a voluntary petition under Chapter 7 of Title 11, United States Code (the "Bankruptcy Code") on January 19, 2017.

3. Seth A. Albin, is the duly appointed chapter 7 trustee assigned to the present case. The Section 341 meeting was original scheduled for February 14, 2017 and continued to March 21, 2017.

4. In the fulfillment of his statutory duties, on January 31, 2017, the UST sent via email correspondence with substantive inquiries to counsel concerning the Debtor's case. See Copy of January 31, 2017, Correspondence from Paralegal Sandra Herling filed simultaneously herewith and incorporated herein as Exhibit 1.

5. On February 16, 2017, an additional e-mail was sent to Debtor's counsel as a follow up enclosing a copy of letter dated January 31, 2017. See Copy of February 16, 2017, e-mail, from Paralegal Sandra Herling filed simultaneously herewith and incorporated herein as Exhibit 2.

6. As of March 21, 2017, no additional communications, responses, or, documents were received by this office.

7. The Debtor's failure to provide the requested information has substantially impeded the UST in his analysis of this case required by § 704(b)(1)(A) and in the fulfillment of his statutory duties.

8. No discharge has been entered in this case.

## II. **Dismissal Pursuant to Section 707(a)**.

9. Section 707(a) provides as follows:

(a) The court may dismiss a case under this chapter only after notice and hearing and only for cause including:

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges refunded under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file…information required…11 U.S.C § 707(a).

The foregoing list is not exhaustive, and a court has discretion what constitutes such cause. See In re Huckfeldt, 39 F.3d 829, 831 (8th Cir. 1994).

10. The U.S. Trustee asserts that the Debtor's unexplained failure to respond to the request constitutes such cause for dismissal and delays these proceeding to the detriment of all parties including creditors. As a result, the Debtor's case should be dismissed for cause.

WHEREFORE, based upon the foregoing, the United States Trustee respectfully requests that the Court dismiss this case for cause pursuant to 11 U.S.C § 707(a).

RESPECTFULLY SUBMITTED this 21st day of March 2017.

Respectfully Submitted,

DANIEL J. CASAMATTA
ACTING UNITED STATES TRUSTEE

PAUL A. RANDOLPH
ASSISTANT UNITED STATES TRUSTEE

BY: /s/ Leonora S. Long
Leonora S. Long, Trial Attorney
Missouri Bar #31655, Federal ID #31655MO
Office of United States Trustee
111 S. 10th Street, Room 6353
St. Louis, MO 63102
Phone (314) 539-2980, Fax (314) 539-2990
leonora.long@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was electronically mailed by the U. S. Bankruptcy Court, Eastern District of Missouri to those names listed below and / or by first class mail postage prepaid this 21st day of March 2017, to the following:

Sean C. Paul, Esq.
The Law Offices of Sean C. Paul, PC
8917 Gravois Rd., 2nd Floor
St. Louis, MO 63123

Seth A. Albin, Esq.
Albin Law
7710 Carondelet Ave., Suite 405
St. Louis, MO 63105

s/s/ Sandra L. Herling
Paralegal Specialist

EXHIBIT 1

U.S. Department of Justice

*United States Trustee*
*Region 13*
*Arkansas, Missouri and Nebraska*

*111 South 10th St., Suite 6353*
*St. Louis, Missouri 63102*

*(314) 539-2976*
*FAX (314) 539-2990*

January 31, 2017

**Via Facsimile @** scp@stlbankruptcyfirm.com

Sean C. Paul, Esq.
The Law Offices of Sean C. Paul, PC
8917 Gravois Rd.
St. Louis, MO 63123

Re: Sheppard, Michael T., Chapter 7 Debtor
Case No. 17-40328 - §341 Hearing 02/14/17 @ 9:00 a.m.

Dear Mr. Paul:

The Office of the United States Trustee ("OUST") is reviewing the above-referenced bankruptcy case for abuse within the meaning of 11 U.S.C. § 707(b)(2); information on the Chapter 7 Statement of Current Monthly Income and Means Test Calculation, Bankruptcy Form 22A.

Also the OUST has an obligation, under the provisions of 11 U.S.C. § 707(b)(3), which became effective for all Chapter 7 case filings on and after October 17, 2005, to review Chapter 7 filings to determine whether debtors whose debts are primarily consumer debts have filed a bankruptcy petition in bad faith, or under a totality of circumstances test whether the debtor's financial situation demonstrates abuse.

The initial review of the filed bankruptcy documents in this case suggest the debts set out therein are primarily consumer debts and merit further review under 11 U.S.C. § 707(b)(2) and under 11 U.S.C. § 707(b)(3).

To continue our review in order to make a determination of whether or not a Motion to Dismiss under 11 U.S.C. §707(b)(2) and/or under11 U.S.C. § 707(b)(3) should be filed in this case, please provide the undersigned with the following information and /or copies of documents:

1. Please provide copies of the last two years Federal and State tax returns filed by the Debtor.

2. Please provide an Amended Schedule I reflecting Debtor's occupation with the City of St. Louis.

3. According to the Debtor's Statement of Intention, he is reaffirming the debt with Franklin American Mtg. regarding real estate located at 5530 Devonshire Ave., St. Louis, MO. What is the Debtor's intent pursuant to the secured debt listed on Schedule D for the 2008 Mazda with Td Auto Finance? Please amend Debtor's Statement of Intention accordingly and/or provide an explanation.

4. It is the U.S. Trustee's position that an individual Debtor who owns more than one vehicle may generally only deduct a vehicle operation/public transportation expense and an ownership/lease expense for one vehicle, unless it is demonstrated that

operation/public transportation expenses and an ownership/lease of a second vehicle is either reasonable and necessary for the health and welfare of the Debtor or the Debtor's dependents, or is necessary for the production of income. Therefore, Form 22A-2, Line 11, should state one (1) vehicle. In addition, Form 22A-2, Line 13d and 33f should be $0.00. Please amend your Form 22A accordingly or provide a detailed explanation as to why the additional amount should be allowed.

5. Form 122A-2, Line 17, lists payment in the amount of $629.16 for involuntary deductions as a requirement of Debtor's employment. Participation in retirement or pension accounts may not qualify for this deduction. Please provide documentation to support this deduction.

6. Form 122A-2, Line 35 shows a priority payment of $40.00. Please provide receipts/documentation to support this deduction concerning priority unsecured claims owed at time of the filing of this case.

Please respond with the requested information and documents addressed to the undersigned on or before February 10, 2017. Failure to respond to this request may result in this office seeking the dismissal of this bankruptcy case. Please communicate with the undersigned should your client determine that this bankruptcy case will be converted to a Chapter 13 case.

Your compliance is anticipated and appreciated. If you should have any questions, don't hesitate to contact me.

Thank you for your attention hereto.

Sincerely,

Sandra L. Herling
Paralegal Specialist
Email Address: Sandra.L.Herling@usdoj.gov

cc: Seth A. Albin, Chapter 7 Panel Trustee
Leonora S. Long, Attorney for U. S. Trustee
Cynthia Moore, Bankruptcy Analyst for Office of U. S. Trustee

EXHIBIT 2

# Herling, Sandra L. (USTP)

**From:** Herling, Sandra L. (USTP)
**Sent:** Thursday, February 16, 2017 11:01 AM
**To:** Sean Paul (scp@stlbankruptcyfirm.com)
**Cc:** Seth A. Albin - Stewart, Mittleman, Heggie & Henry, LLC (salbin@albinlawstl.com); Long, Leonora (USTP); Moore, Cynthia (USTP)
**Subject:** FW: 17-40328 Sheppard, Michael T. - Possible 707(b)
**Attachments:** Sheppard-atty ltr-Albin.pdf

Mr. Paul – We have not received a response to our letter dated 014/31/17 (attached) as of this date. The §341 hearing has been continued to 03/21/17 @ 3:00 p.m. Please respond at your earliest convenience. Thank you.

**Sandra L. Herling**
U.S. Department of Justice
Paralegal Specialist

(314) 539-2976 Work
Sandra.L.Herling@usdoj.gov

111 South 10th St

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**From:** Herling, Sandra L. (USTP)
**Sent:** Tuesday, January 31, 2017 9:39 AM
**To:** 'scp@stlbankruptcyfirm.com'
**Cc:** Seth A. Albin - Stewart, Mittleman, Heggie & Henry, LLC (salbin@albinlawstl.com); Long, Leonora (USTP); Moore, Cynthia (USTP)
**Subject:** 17-40328 Sheppard, Michael T. - Possible 707(b)

Sheppard, Michael T., Chapter 7 Debtor
Case No. 17-40328 - §341 Hearing 02/14/17 @ 9:00 a.m.

**Sandra L. Herling**
U.S. Department of Justice
Paralegal Specialist

(314) 539-2976 Work
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111 South 10th St